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6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 EASTERN DISTRICT OF CALIFORNIA

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9 CLARENCE RAY, JR.,) Case No. CIV. F-96-6252-AWI
10)
10 Petitioner,) DEATH PENALTY CASE
11)
11 vs.) ORDER GRANTING REQUEST TO
12) APPOINT COUNSEL; DIRECTING
12 Steven W. Ornoski, as Acting) PETITIONER TO FILE QUARTERLY
12 Warden of San Quentin State) STATUS REPORTS REGARDING
13) STATUS OF STATE PROCEEDINGS;
13 Prison,*) AND DIRECTING PETITIONER TO
14) SCHEDULE A CASE MANAGEMENT
14 Respondent.) CONFERENCE

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16 This matter is before the Court on the application of Petitioner
17 Clarence Ray, Jr. ("Ray") to refer his case to the Selection Board of
18 the Eastern District of California for appointment of federal counsel.
19 The Court previously, on February 13, 1997, denied Ray's request for
20 appointment of counsel without prejudice due to the pendency of a
21 state petition for post-conviction relief, since under then-
22 controlling precedent and policy, federal habeas litigants were not
23 permitted to work on federal habeas cases while state exhaustion
24 proceedings were pending. As Ray points out in his moving papers, the
25 Supreme Court decision in *Rhines v. Weber*, 544 U.S. ___, 125 S.Ct.
26 1528 (2005) has altered precedent in this regard. Under *Rhines*,
27 federal habeas litigants are now permitted to proceed with some

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* Steven W. Ornoski is substituted for his predecessor, Jeanne S. Woodford, as Acting Warden of San Quentin State Prison pursuant to 96dp6252.02ApptCounsel.Ray.wpd Federal Rule of Civil Procedure 25(d).

1 aspects of litigation of federal habeas petitions though state
2 exhaustion proceedings have not been completed.

3 The Court finds good cause for granting Ray's request. Due to
4 the procedural status of the case, however, the Court also finds it
5 necessary to require Ray to file quarterly status reports concerning
6 the progress of state proceedings and to schedule a case management
7 conference to discuss matters that may be of interest to Respondent
8 Steven W. Ornoski, As Acting Warden of San Quentin State Prison (the
9 "Warden") and his counsel. As a backdrop for the anticipated case
10 management conference, the chronology of Ray's post-conviction efforts
11 in federal and state court is detailed:

- 12 • November 8, 1996, Ray commenced this action in the Sacramento
13 Division of the Court seeking a temporary stay of execution and
14 appointment of counsel.
- 15 • November 14, 1996, Ray filed a petition for state habeas relief
16 in the California Supreme Court.
- 17 • November 25, 1996, after the case was transferred to the Fresno
18 Division of the Court, Ray added a request for leave to proceed
19 in forma pauperis; all requests were granted.
- 20 • December 18, 1996, the Court entered an order modifying the
21 duration of the stay of execution to and including February 7,
22 1997, while the Selection Board recommended counsel for
23 appointment.
- 24 • February 13, 1997, in response to a request to extend the
25 temporary stay of execution another 45 days during the process
26 of recommending counsel, the Court denied without prejudice the
27 request for stay and foreclosed further efforts to appoint
28 counsel on account of the pending state exhaustion petition.

- September 27, 2002, Ray filed a second state habeas petition, alleging a single claim under *Atkins v. Virginia*, 536 U.S. 307 (2002).
- April 9, 2003, the California Supreme Court denied Ray's initial state habeas petition (filed November 14, 1996).

7 The Court grants Ray's request for appointment of counsel, and
8 to that end, refers the case to the Selection Board for the Eastern
9 District of California. The Court requests that the Selection Board
10 keep the Court apprised, through informal communications on a monthly
11 basis, of the Board's efforts in finding suitable counsel.

12 Because the Court learned for the first time when reviewing the
13 present application that Ray's initial state habeas petition was
14 denied over two and one-half years ago, with no notification to this
15 Court, and further that a second state habeas petition was filed over
16 three years ago, again with no notification to this Court, the Court
17 requires Ray to file with the Court quarterly status reports
18 describing the progress of state court proceedings. These quarterly
19 status reports shall be filed at the beginning the first, fourth,
20 seventh, and tenth months of each calendar year, beginning with
21 January 2006.

22 To provide the Warden an opportunity to address the present
23 order, the status of the state habeas petition, Ray's plans for filing
24 his initial federal petition, or any other matter, the Court will
25 conduct a preliminary case management conference. To accomplish this,
26 Ray, through the Office of the Federal Defender and the Selection Board
27 for the Eastern District of California will schedule a case management
28 conference with the Court at the earliest date available on the

1 Court's calendar at which a representative from the Federal Defender's
2 Office and the Attorney General's Office are able to attend. The
3 conference shall be conducted telephonically, with the Federal
4 Defender responsible for arranging and initiating the call. The
5 Federal Defender shall provide written notice of the hearing by filing
6 a Notice of CMC.

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8 IT IS SO ORDERED.

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10 DATED: December 30, 2005

11 /s/ Anthony W. Ishii

12 Anthony W. Ishii

13 United States District Judge

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